

**IN THE UNITED STATES DISTRICT COURT FOR MARYLAND
(NORTHERN DIVISION)**

**FRANK MAIO
411 Saddleback Trail
Mt. Airy, MD 21771**

And

**AMELIA MAIO
411 Saddleback Trail
Mt. Airy, MD 21771**

Plaintiffs,

v.

**ERIE INSURANCE EXCHANGE
Corporate Address:
100 Erie Insurance Plaza
Erie, PA 16530**

**Serve On: Al Redmer, Jr., Commissioner
Maryland Insurance Administration
200 St Paul Place, Suite 2700
Baltimore, Maryland 21202**

Defendant.

COMPLAINT

COMES NOW the Plaintiffs, Frank Maio and Amelia Maio, by and through their attorneys, Kenneth M. Berman and Berman, Sobin, Gross, Feldman & Darby, LLP, and sues the Defendant, Erie Insurance Exchange as cause of action states the following:

NATURE OF THE ACTION

1. This is an action for damages arising from a breach of contract action for benefits afforded to the Plaintiffs under the Underinsured Motorist provision of their

automobile insurance policy issued by the Defendant, Erie Insurance Exchange.

Jurisdiction in this Honorable Court is based on diversity.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiffs, Frank Maio and Amelia Maio are adult residents of Carroll County, Maryland.

3. Defendant Erie Insurance Exchange is an insurance company with its principal office located in Erie, Pennsylvania;

4. That the amount of this claim exceeds Seventy Five Thousand Dollars (\$75,000.00).

5. That the venue for this claim is proper in the United States District Court of Maryland, Northern Division as there is diversity of jurisdiction pursuant to U.S.C.A. §1332, as the parties are from different states.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

6. That on or about August 28, 2013 at approximately 3:30 p.m., the Plaintiff, Frank Maio, was operating his vehicle, with all due care and without contributory negligence, on Goucher Boulevard near its intersection with Dulaney Valley Road in the Towson area of Baltimore County, Maryland;

7. That on the same date and at the same approximate time, the tortfeasor Rachel Moser, was operating her vehicle just behind the vehicle operated by the Plaintiff, Frank Maio on Goucher Boulevard near its intersection with Dulaney Valley Road in the Towson area of Baltimore County, Maryland;

8. That at the above-described place and time, the tortfeasor, Rachel Moser, failed to keep an adequate look out and control her speed when she suddenly, and without warning struck the rear of the male Plaintiff, Frank Maio's vehicle which had come to a stop for a solid red traffic signal;

9. That the sudden and violent nature of the impact forced Mr. Maio forward in his seat to such an extent it resulted in him striking the sun visor of his car before being propelled back into his headrest;

10. That as a result of the violent collision, the Plaintiff, Frank Maio sustained injuries which include, but are not limited to his neck, back and accompanying radiating arm pain, all of which have caused and will continue to cause the male Plaintiff, Frank Maio, extreme pain, mental anguish, permanent disability, loss of the ability to enjoy normal recreational activities, loss of earnings and earning capacity, and substantial medical expenses. Additionally, Mr. Maio's injuries resulted in disc protrusion and posterior tear at the C5-C6 level which required a C5-C6 anterior cervical decompression and fusion surgery.

11. That the tortfeasor, Rachel Moser's insurance carrier, Progressive Insurance Company has tendered the "policy limits" of Fifty Thousand Dollars (\$50,000.00) to the Plaintiff, Frank Maio as a result of the injuries he sustained in the aforementioned collision.

COUNT I
(Erie Insurance Exchange - Breach of Contract)

12. That the Plaintiffs hereby adopt by reference all of the facts and allegations contained in Paragraphs above;

13. That the Plaintiffs, Frank Maio and Amelia Mayo, obtained a policy of automobile insurance through Erie Insurance Exchange which provided underinsured/uninsured motorist coverage as there was no affirmative waiver signed by either Frank Maio or Amelia Maio, pursuant to Section 19-510(b)(2) of the Insurance Article of the Annotated Code of Maryland, waiving such coverage;

14. That the above-referenced policy issued to the Plaintiffs by the Defendant, Erie Insurance Exchange, was conditioned in such a way that if the Plaintiffs were involved in an accident for which another driver and vehicle was liable and the other driver and vehicle was uninsured or underinsured, the Defendant, Erie Insurance Exchange, agreed to compensate the employee(s) for injuries and medical expenses incurred as a result of the negligent acts of an uninsured/underinsured party;

15. That the Plaintiff, Frank Maio, was injured as a result of the negligence of the tortfeasor, Rachel Moser, who had a minimal insurance policy which was not sufficient to cover the male Plaintiff's damages and thus an underinsured motorist as defined by the Erie Insurance Exchange policy;

16. That the Plaintiffs have provided documentation as to their damages and despite said documentation no payments have been made by Defendant, Erie Insurance Exchange.

WHEREFORE, the Plaintiff, Frank Maio, demands judgment against the Defendant, Erie Insurance Exchange in an amount in excess of Seventy Five Thousand Dollars (\$75,000.00) plus interest, court costs and attorney's fees.

COUNT II

(Breach of Contract/Loss of Consortium-Defendant Erie Insurance Exchange)

17. That the Plaintiffs, Frank Maio and Amelia Maio, hereby adopt by reference all of the facts and allegations contained in the Count and Allegations above;

18. That at all times material to this suit, Plaintiff, Frank Maio was the lawful spouse of the female Plaintiff, Amelia Maio;

19. That as a direct and proximate result of the negligence of the tortfeasor, Rachel Moser and the breach of contract by Defendant, Erie Insurance Exchange, the Plaintiffs jointly lost, and will continue to lose, the society companionship, and consortium of each other, causing detriment to their marital relationship, all of this occurring without contributory negligence on the part of the Plaintiffs.

WHEREFORE, the Plaintiffs, Frank Maio and Amelia Maio, jointly demand of the Defendant, Erie Insurance Exchange loss of consortium damages in an amount that exceeds Seventy Five Thousand Dollars (\$75,000.00), plus interest and costs of this suit.

BERMAN, SOBIN, GROSS,
FELDMAN & DARBY, LLP

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